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Federal Communications Commission

DA 95-1271

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 95-83

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Littlefield, Wolfforth and
Tahoka, Texas)

RM-8634

NOTICE OF PROPOSED RULE MAKING

Adopted: June 8, 1995; Released: June 19, 1995

Comment Date: August 10, 1995

Reply Comment Date: August 25, 1995

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by 21st Century Radio Ventures, Inc. ("petitioner"), permittee of Station KAIQ(FM), Channel 238C3, Littlefield, Texas, requesting the reallocation of Channel 238C3 from Littlefield to Wolfforth, Texas, and the modification of its construction permit to specify Wolfforth as its community of license. Petitioner also requests the deletion of vacant Channel 237A at Tahoka, Texas, in the alternative, the substitution of Channel 278A for Channel 237A at Tahoka.¹ Petitioner states it will apply for Channel 238C3 at Wolfforth, if allotted.²

2. Petitioner seeks modification of Station KAIQ(FM)'s construction permit pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. Petitioner states that adoption of its proposal will result in a preferential arrangement of allotments by bring-

ing a first local aural transmission service to Wolfforth, while Littlefield will retain service from Station KZZN(AM). Petitioner notes that Wolfforth is an incorporated community with a population of 1,941 persons. Petitioner adds that Wolfforth is governed independently (Mayor and five council members) and hold elections for its own officials. Moreover, Wolfforth operates its own fire department and collects certain separate "ad valorem" property taxes. Petitioner states the reallocation will result in a dramatic increase in service to populated areas, with service increasing from 35,241 to 252,733 persons.³

3. We believe the proposal warrants consideration because the proposed reallocation of Channel 238C3 from Littlefield to Wolfforth, Texas, could provide the community with its first local aural transmission service. Further, the reallocation of Channel 238C3 to Wolfforth will not deprive Littlefield of its sole local aural transmission service or result in the reallocation of a channel from a rural community to one within an urbanized area. Channel 238C3 can be reallocated from Littlefield to Wolfforth, Texas, in compliance with the minimum distance separation requirements with a site restriction of 9.3 kilometers (5.8 miles) south to accommodate petitioner's desired transmitter site.⁴ As requested, we also propose to modify petitioner's construction permit for Station KAIQ(FM) to specify Wolfforth as the station's community of license. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept expressions of interest in the use of Channel 238C3 at Wolfforth or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

4. We shall also solicit comments on whether we should delete vacant and unapplied for Channel 237A at Tahoka, Texas. In accordance with Commission policy, if no party expresses an interest in use of Channel 237A at Tahoka, during the comment period in this proceeding, we shall delete the channel for lack of interest. However, if interest is expressed to retain Channel 237A and petitioner's proposal is adopted, we propose to substitute Channel 278A for Channel 237A at Tahoka. Channel 278A can be allotted to Tahoka in compliance with the minimum distance separation requirements with a site restriction of 5.6 kilometers (3.5 miles) northeast to accommodate petitioner's reallocation proposal.⁵

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

¹ Petitioner also suggests the allotment of Channel 240C3 at Littlefield, Texas, as a replacement for Channel 238C3. However, petitioner has not expressed an interest in applying for Channel 240C3 at Littlefield, therefore, we will not propose the allotment of the channel to the community.

² Although petitioner's request indicates that the original copy of its proposal was signed, petitioner failed to include an affidavit verifying that the statements contained in its petition were accurate to the best of its knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and certifications. See also Amend-

ment of Section 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes, 5 FCC Rcd 3911, n.42 (1990). Petitioner is requested to rectify this omission in its comments.

³ Petitioner states there will be a theoretical loss in service to 17,638 persons and denotes the loss is theoretical since Station KAIQ(FM) is unbuilt and has never been on the air. In addition, it advises that Station KAIQ(FM) was obtained on a first-come first-serve basis and as a result is not subject to any comparative hearing process restriction to change its community of license; citing, *Memorandum and Opinion and Order*, 5 FCC Rcd at 7097.

⁴ The coordinates for Channel 238C3 at Wolfforth are North Latitude 33-25-48 and West Longitude 102-03-35.

⁵ The coordinates for Channel 278A at Tahoka are North Latitude 33-11-34 and West Longitude 101-44-44.

City	Channel No.	
	Present	Proposed
Option I		
Littlefield, Texas	238C3	--
Wolfforth, Texas	--	238C3
Tahoka, Texas	237A	--
Option II		
Littlefield, Texas	238C3	--
Wolfforth, Texas	--	238C3
Tahoka, Texas	237A	278A

ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **August 10, 1995**, and reply comments on or before **August 25, 1995**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

James L. Primm
21st Century Radio Ventures, Inc.
713 Broadway
Santa Monica, California 90401
(Petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on

behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.